IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1178 OF 2006 IN SUIT NO.95 OF 2006

NTPC Limited. ..Plaintiff.

Vs.

Reliance Industries Ltd. ..Defendant.

Mr.R.M. Kadam, Advocate General with Mr. D.D.Madan, Mr.V.R.Dhond, Mr.S.V. Doijode, Ms. Iyer i/by Doijode & Associates for the plaintiff/Applicant in supporpt.

Mr.Apsi Chinay , Sr.Counsel with Mr. Milind Sathe and Mr. Amit Doctor i/by Junnarkar & Associates for the Defendant to Show Cause.

CORAM : R.S. MOHITE, J.
DATED : 25/9/2006.

P.C.

1. This is a chamber summons for amendment of the plaint. It appears that the plaint which has been filed by the original plaintiff is for a declaration that there exists a valid, concluded and binding contract between the parties. The declaration is sought by prayer (a). There is an averment in Para 19 wherein the plaintiff has averred that a valid, concluded and binding contract has come into existence. It appears that while drafting the plaint prayer clause (b) as framed was for decree of specific performance directing the defendant to rectify the document and sign the same in conformity and according to agreed terms and for that

purpose for a direction to allow necessary corrections to be made in the document in accordance with the agreement. It is not disputed that as of today no written statement has been filed and the trial in the suit has not yet commenced. By the amendment, the main change which is sought to be introduced is an additional prayer for specific performance of the contract, the existence of which is already averred in the plaint.

2. Grant of such an amendment was opposed on the ground that the plaintiff had omitted to ask for the said relief which they could have in this suit. It is sought to be contended that if the plaintiff wanted to file a fresh suit for the same relief then they could not do so unless they obtained leave of this court under Order 2 Rule 2, sub rule-3 of the C.P.C. It is contended that therefore, there was a vested right in the defendant and such vested right cannot be defeated by having resort to the amendment of the plaint. It is sought to be further contended that the position was similar to a situation where an amendment introducing a time barred relief was sought to be made in such a suit in order to get over the bar of limitation.

3. In my view, example which is given is on the different footing where an amendment for introducing a relief barred by limitation is sought to be introduced,

there is an absolute vested right in the defendant. In the present case, there is no absolute right in favour of the defendant. The plaintiff can always obtain leave of this court to sue for the relief which is omitted in the first suit. The question as whether leave is to be granted in case any such application is made will turn on similar footing as to whether leave has to be granted to amend the plaint. In the present case, it is desirable and in the interest of justice, that the amendment should be allowed. My attention has been drawn to the recent judgment of the Apex Court in the case of **Ragu Thilak D. John Vs. S. Rayappan and others reported in (2001) 2 S.C.C. 472.** In the said case a relief was sought for amendment of plaint and it was argued that the relief sought by way of amendment would be barred by law of limitation. The Apex Court held that the amendment should still be allowed and the disputed matter made the subject matter of an issue. The second case cited is between **Rajesh Kumar Agarwal and others Vs. K.K. Modi and others reported in (2006) 4 S.C.C. 385** where, in Paragraphs 14,15 and 16, the Apex Court after referring Order 6 Rule 17 of the Code of Civil Procedure held that court should allow all amendments that may be necessary for determining the real question in controversy between the parties, provided it does not cause injustice or prejudice to the other side.

4. In the present case no prejudice will be caused to the other side because the defendants have not filed their written statement,. The existing pleadings clearly allege the existence of a concluded contract. In the circumstances, in my view, chamber summons is required to be allowed. Accordingly, the same is allowed in terms of prayer clause (a). Amendment to be carried out within a period of three weeks from today.

(R. S. MOHITE, J.)